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## **During Trying Times Companies Might Bring More Lawyers In House**

by K.C. Victor

In recessionary times there is a general belief that fewer lawyers are needed. There are fewer deals being done and litigation is often not worth pursuing against shallow pockets. There are, however, a few types of legal hires which tend to increase in bad economic times. One of these is the hiring of in-house counsel.

In particular, solo, often first time, in-house hires by smaller and mid-sized companies increase during trying economic times. Small and middle-sized organizations that have never thought of hiring an in-house lawyer look at their legal bills and decide, often correctly, that there would be a financial savings to bringing this work inside.

Such hires also often benefit companies in ways which are not financial. When there is a lawyer down the hall who does not bill by the hour, enterprises have the advantage of being able to ask their lawyer more questions at every stage of even seemingly unimportant business decisions. Business decisions unlikely to involve any legal questions can get considered by another brain, often a brain more cautious and careful than those that have already reviewed the matter at hand. The best lawyers are also good business people, and these companies benefit from more than just their counsel's legal advice. Furthermore, because a comfort level develops with someone who is on premises on a daily basis, people within the organization tend to inquire about the legality of business decisions, tax consequences, etc. even in the preliminary or planning stages of a business question, a stage where outside counsel is rarely consulted.

There are a few rules of thumb for companies considering hiring a general counsel, or general counsel equivalent, for the first time. In major cities it seldom makes sense to hire a general counsel unless an organization is spending at least \$400,000 in legal bills. Sometimes that number is closer to \$500,000. That way, a good lawyer can be hired (because he or she will be properly paid) and the organization can still afford a secretary, insurance for both the lawyer and the secretary, etc. and save some money even from the start.

In order for a company to hire a seasoned attorney with a set of apt and honed skills, a higher compensation package will often need to be paid. That may make an organization's total legal costs for the first year, or even two, look higher than previous years. Nonetheless, on a regular basis, it seems especially in hard times, companies hire their first in-house lawyer anyway. A legal brain is a valuable addition to a business team.

Companies with an extremely wide variety of legal issues may not want to hire an in-house attorney until they reach a certain size. Most organizations, however, have a limited number of legal areas within which they are primarily involved; most of their business experiences revolve around common legal issues. For instance, manufacturers generally have involvement with

supply contracts on both the negotiation and dispute front as well as labor law; restaurants handle marketing issues and health regulations in addition to labor law. It is a rare organization for which the bulk of the legal work involves more than a few general areas of the law.

Nonetheless, a decision about whether to hire a general counsel will require careful analysis of both past and projected legal issues. If for some reason there are few common or regular themes to an organization's legal issues, outside counsel should remain the way to go, regardless on the amount of money being spent. Smart and versatile lawyers can learn new things and develop expertise, perhaps even rapidly, but no one can be expected to repeatedly be an instant expert on a wide variety of different legal agendas. It is wrong for even small organizations to expect their in-house lawyer to never consult outside counsel. The goal is to keep what the counsel cannot do on his or her own to a minimum and to hire a lawyer smart and versatile enough that he or she can learn new things fairly quickly.

When possible, it is best for companies to hire a lawyer who has already done some of their legal work, someone who knows their business and the people in that business. If an organization is concerned about the seeming obviousness of a legal hiring decision and wants to be sure the hire being made is careful, and not just easy or comfortable, a recruiting professional can usually be consulted on a free or less than full fee basis to interview and vet the preferred candidate. So long as the truth is told to all, a company may want to (with or without an outside recruiter) interview different candidates who present different advantages for the company.

If a company needs to hire a lawyer previously unfamiliar with the enterprise, the most significant consideration is how versatile that lawyer is with the usual legal issues of the organization. Almost as important a question is how fast a lawyer under consideration can understand the intricacies of the organization's business arrangements, both internal and external. If there are difficult personalities involved in the business, what sort of tone will be best for a lawyer working with these people to take? While it makes little sense for a company to hire a lawyer who will never question anything about its client operations or legal issues, a new in-house lawyer should be visionary enough to think like a business person and see what may seem like a legal issue from a business perspective as well.

When a company's executives have been used to working in their day-to-day world without a legal perspective on their decisions, it is especially important that the organization's first in-house lawyer understand the business and be able to see the forest for the trees.

Finally, the fact that a company has decided to hire a first in-house counsel does not mean that at the end of the day there should necessarily be such a hire. Although most of the time, an appropriate and skilled candidate can be found, sometimes the interviewing process itself allows an organization to realize that it would rather not bring its legal work in-house. A company may realize it prefers the diversity of outside counsel or that their favorite choice for in-house counsel is its best outside counsel who has insufficient interest in moving in-house. In all times, and especially hard times, small and middle-sized companies have reasons to think about bringing work in-house, but it is crucial to get the work done as well or close to as well as possible. That does not always mean doing the work in-house. But it only usually does.